IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 18.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.687 of 2006

Usha Mary .. Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The District Collector and
District Magistrate,
Thiruvannamalai District
Thiruvannamalai. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to direct the respondents to produce the detenue Chitra, wife of Arul, who is now detained in Special Prison for Women, Vellore in pursuance of the detention order passed by the second respondent on 12.07.2006 in D.O.No.37/2006-C2 before this Court, call for the records, set aside the order and set the detenue at liberty forthwith.

For Petitioner : Mr.S.Swamidoss Manokaran
For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the daughter of the detenue, by name Chithra, who is detained as a ''Bootlegger" as contemplated under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated

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12.07.2006, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner submitted that pre-detention representations dated 23.06.2006 and 26.06.2006 were not duly considered. He also submitted that it is not clear when these representations were considered and intimated to the petitioner. By pointing out the inconsistency in the English and Tamil version of grounds of detention as well as the counter affidavit filed by the second respondent, the learned counsel for the petitioner submitted that the detention order is liable to be quashed on the ground of non application of mind on the part of the detaining authority.

4. In the light of the above submission, we have verified para 5(a) of the ground of detention. Both in English and Tamil version of the grounds of detention, reads as under.

> "5(a) A pre-detention petitions dated 23.06.2006 and 26.06.2006 from her daughter Tmt.Ushameri, W/o Rajkumar received by the detaining authority and the remarks of the Sponsoring Authority was obtained and the above petitions were duly considered and rejected and endorsement served to the petitioner on 11.06.2006."

> '5(a) திருமதி சித்ரா என்பவரின் மகள் திருமதி உஷாமேரி க.பெ.ராஜ்குமார் என்பவரின் 23.06.2006 மற்றும் 26.06.2006ந் தேதியிட்ட பகார் முறையீட்டு மனுக்கள் தடுப்புக்காவல் அதிகாரியால் பெறப்பட்டு, இம்மனு மீது பிரேரேபிக்கும் அதிகாரியின் குறிப்புரை பெற்று அதன் மீது கவனத்துடன் பரிசீலனை செய்து முறையீட்டு மனுக்கள் நிராகரிக்கப்பட்டு மேலேழுத்து மனுதாரருக்கு 11.07.2006 அன்று நேரில் சார்வ செய்யப்பட்டுள்ளது.'

5. It is clear that when the representations are dated 23.06.2006 and 26.06.2006, the same cannot be considered and rejected on 11.06.2006 as stated in the English version of the grounds of detention. Though it is correctly stated viz., 11.07.2006 in the Tamil version of the grounds of detention, the second respondent, who is none else than the District Magistrate and District Collector, who filed a counter affidavit, has stated that those representations were rejected by the proceedings dated 09.06.2006. It is unfortunate that when he is aware of the fact that both the pre-detention representations were dated 23.06.2006 and 26.06.2006, it is not clear how he mentioned that those representations were rejected by the proceedings dated 09.06.2006. The said statement of fact, which is available at para 10 of the counter affidavit of the Collector, Thiruvannamalai District, amply

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shows that he has not taken care to verify the dates and events mentioned in the counter affidavit, when he is a party to the said document. In view of the inconsistent stand taken in the grounds of detention and the counter affidavit filed before this Court, we are of the view that the ultimate detention order is liable to be quashed on the ground of non application of mind and accordingly, the same is quashed.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenue is directed to be set at liberty forthwith from the custody unless she is required in some other case or cause.

raa'

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government, State of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

2. The District Collector and District Magistrate, Thiruvannamalai District, Thiruvannamalai.

3. The Superintendent, Special Prison for Women, Vellore..
(In duplicate for communication to detenue)

4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

+ one cc to Mr. S. Swamidoss Manokaran, Advocate sr no. 43705

HPR(CO)
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